REQUEST FOR PROPOSAL (RFP)

RFP Number: REOPEN B0001620

Date: Wednesday, November 6, 2019

Closing Date: Tuesday, December 3, 2019 @ 2:00 PM

Procurement Officer: Kim Sowell
Telephone: 316-978-3784
E-Mail Address: kim.sowell@wichita.edu

Item: REOPEN – Job Order Contracting Group 3 Roofing

Agency: Wichita State University (WSU)

Location(s): 1845 Fairmount, Campus Box 12
Wichita, KS 67260-0012

Period of Contract: The term of contract will begin on date of award through November 31, 2020
(with the option for four (4) additional optional one (1) year automatic renewals, up to five (5) years total.

Guarantee: No Monetary Guarantee Required

Scope: This Contract shall cover the procurement of Job Order Contracting for Group 3 Roofing for
WSU during the contract period referenced above.

READ THIS REQUEST CAREFULLY

Failure to abide by all of the conditions of this Request may result in the rejection of a bid. Inquiries about this Request should indicate the contract number and be directed to the procurement officer.

RFB Number B0001620 was recently posted to the WSU Office of Purchasing Internet website. The document can be downloaded by going to the following website:

www.wichita.edu/purchasing

It shall be the bidder's responsibility to monitor this website on a regular basis for any changes/addenda.

Questions may be submitted to kim.sowell@wichita.edu as long as they are submitted no later than the close of business on Monday, November 18, 2019. Failure to submit questions for clarification on time may result in those questions not being considered. Bidders should clearly understand that the only official answer or position of WSU will be in writing through an addendum issued.
SIGNATURE SHEET

Item:             Job Order Contracting – Group 3 Roofing
Agency:           Wichita State University
Closing Date:     Tuesday, December 3, 2019 @ 2:00 PM

We submit a proposal to furnish requirements during the contract period in accordance with the specifications and Schedule of Supplies. I hereby certify that I (we) do not have any substantial conflict of interest sufficient to influence the bidding process on this bid. A conflict of substantial interest is one which a reasonable person would think would compromise the open competitive bid process.

Addenda: The undersigned acknowledges receipt of the following addenda:

#1(____)    #2(____)    #3(____)    None(____)

Legal Name of Person, Firm or Corporation_____________________________________________________

Toll Free Telephone______________________________Local____________________Fax____________________

E-Mail______________________________________________________________

Mailing Address______________________________________________________

City & State__________________________________________________________Zip Code____________________

FEIN Number__________________________________________________________

Signature___________________________________________________________Date________________________

Typed Name of Signature____________________________________________Title_____________________

If awarded a contract and purchase orders are to be directed to an address other than above, indicate mailing address and telephone number below.

Address______________________________________________________________

City & State__________________________________________________________Zip Code____________________

Toll Free Telephone______________________________Local____________________Fax____________________

E-Mail______________________________________________________________
TAX CLEARANCE

Wichita State University strongly supports the State of Kansas Tax Clearance Process. Vendors submitting bids or proposals which exceed $25,000 over the term of the contract shall include a copy of a Tax Clearance Certification Form with their submittal. Failure to provide this information may be cause for rejection of a vendor’s bid or proposal.

A “Tax Clearance” is a comprehensive tax account review to determine and ensure that the account is compliant with all primary Kansas Tax Laws administered by the Kansas Department of Revenue (KDOR) Director of Taxation. Information pertaining to a Tax Clearance is subject to changes(s), which may arise as a result of a State Tax Audit, Federal Revenue Agent Report, or other lawful adjustment(s).

To obtain a Tax Clearance Certificate, you must:

- Go to https://www.kdor.ks.gov/apps/taxclearance/Default.aspx to request a Tax Clearance Certificate
- Return to the website the following working day to see if KBOR will issue the certificate
- If issued an official certificate, print it and attach it to your bid response
- If denied a certificate, engage KDOR in a discussion about why a certificate was not issued

Bidders (and their subcontractors) are expected to submit a current Tax Clearance Certificate with every bid response.

Please Note: Individual and business applications are available. For applications entered prior to 5:00 PM Monday through Friday, results typically will be available the following business day. Tax clearance results may be denied if the request includes incomplete or incorrect information.

Please Note: You will need to sign back into the KDOR website to view and print the official tax clearance certificate.

A copy of the Certification of Tax Clearance form received from the Kansas Department of Revenue should be sent along with the bid response to:

Wichita State University
Purchasing Office
1845 Fairmount Street, Campus Box 012
Wichita, KS 67260-0012

Failure to provide this information may be cause for rejection of vendor’s bid or proposal.

Information about Tax Registration can be found at the following website: http://www.ksrevenue.org/forms-btreg.html

The WSU Purchasing Office reserves the right to confirm tax status of all potential contractors and subcontractors prior to the release of a purchase order or contract award.

In the event that a current tax certificate is unavailable, the WSU Purchasing Office reserves the right to notify a bidder (one that has submitted a timely event response) that they have to provide a current Tax Clearance Certificate within ten (10) calendar days, or WSU may proceed with an award to the next lowest responsive bidder, whichever is determined by the Purchasing Director to be in the best interest of WSU and the State.
CERTIFICATION REGARDING
IMMIGRATION REFORM & CONTROL

All Contractors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the Contractor as well as any subcontractor or sub-subcontractor. The usual method of verification is through the Employment Verification (I-9) Form. With the submission of this bid, the Contractor hereby certifies without exception that Contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at the State’s option, may subject the contract to termination and any applicable damages.

Contractor certifies that, should it be awarded a contract by the State, Contractor will comply with all applicable federal and state laws, standards, orders and regulations affecting a person’s participation and eligibility in any program or activity undertaken by the Contractor pursuant to this contract. Contractor further certifies that it will remain in compliance throughout the term of the contract.

At the State’s request, Contractor is expected to produce to the State any documentation or other such evidence to verify Contractor’s compliance with any provision, duty, certification, or the like under the contract.

Contractor agrees to include this Certification in contracts between itself and any subcontractors in connection with the services performed under this contract.

____________________________________________                                             _______________________
Signature, Title of Contractor        Date
SECTION I - CONDITIONS TO BIDDING

1.1 **Proposal Reference Number**: The above-number, B0001620 has been assigned to this Request and MUST be shown on all correspondence or other documents associated with this Request and MUST be referred to in all verbal communications. All inquiries, written or verbal, shall be directed to the procurement officer only.

Kim Sowell  
Telephone: 316-978-3784  
Facsimile: 316-978-3528  
E-mail Address: kim.sowell@wichita.edu  
Wichita State University  
Office of Purchasing  
1845 Fairmount, Campus Box 12  
Wichita, KS 67260-0012

No communication is to be had with any other WSU employee regarding this Request except with designated participants in attendance **ONLY DURING**:

- Negotiations  
- Contract Signing  
- as otherwise specified in this Request.

Violations of this provision by vendor or WSU personnel may result in the rejection of the proposal.

1.2 **Negotiated Procurement**: This is a negotiated procurement. Final evaluation and award is made by the Procurement Negotiation Committee (PNC) or their designees, which consists of the following:

- Director, Office of Purchasing  
- Kim Sowell, Office of Purchasing  
- Facilities Planning, Facilities Services and Housing

1.3 **Appearance Before Committee**: Any, all or no vendors may be required to appear before the PNC to explain the vendor's understanding and approach to the project and/or respond to questions from the PNC concerning the proposal; or, the PNC may award to the low bidder without conducting negotiations. The PNC reserves the right to request information from vendors as needed. If information is requested, the PNC is not required to request the information of all vendors.

Vendors selected to participate in negotiations may be given an opportunity to submit a best and final offer to the PNC. Prior to a specified cut-off time for best and final offers, vendors may submit revisions to their technical and cost proposals. Meetings before the PNC are not subject to the Open Meetings Act. Vendors are prohibited from electronically recording these meetings. All information received prior to the cut-off time will be considered part of the vendor's best and final offer.

No additional revisions shall be made after the specified cut-off time unless requested by the PNC.

1.4 **Pre-proposal Conference** - A pre-proposal conference will be held on **Tuesday, November 12, 2019 @ 3:00 pm**:

Wichita State University  
1845 Fairmount  
Wichita, KS 67260  
**Building: Rhatigan Student Center, Room 258**

**Attendance is required at the pre-proposal conference.** Due to space limitations, vendors should attend with no more than two representatives. All questions requesting clarification of the Request to be addressed at the pre-proposal conference must be submitted in writing to the Procurement Officer's email or (Fax 316-978-3528) prior to the
Failure to notify the Procurement Officer of any conflicts or ambiguities in the Request may result in items being resolved in the best interest of WSU. Any modification to this Request as a result of the pre-proposal conference, as well as written answers to written questions, shall be made in writing by addendum and mailed to all vendors who received the original request from the Office of Purchasing. Only written communications are binding.

1.5 **Cost of Preparing Proposal:** The cost of developing and submitting the proposal is entirely the responsibility of the vendor. This includes costs to determine the nature of the engagement, preparation of the proposal, submitting the proposal, negotiating for the contract and other costs associated with this Request. All responses will become the property of WSU and will be a matter of public record subsequent to signing of the contract or rejection of all bids.

1.6 **Evaluation of Proposals:** Award shall be made in the best interest of WSU as determined by the Procurement Negotiating Committee or their designees. Consideration may focus toward but is not limited to:

- 1.6.1 cost. Vendors are not to inflate prices in the initial proposal as cost is a factor in determining who may receive an award or be invited to formal negotiations;
- 1.6.2 adequacy and completeness of proposal;
- 1.6.3 vendor's understanding of the scope of work;
- 1.6.4 compliance with the terms and conditions of the Request;
- 1.6.5 experience in providing like services; provide examples of similar projects completed in the last 5 years
- 1.6.6 qualified staff with the appropriate certifications and training;
- 1.6.7 perform all means and methods to meet construction project requirements and contract;

1.7 **Acceptance or Rejection:** The Committee reserves the right to accept or reject any or all proposals or part of a proposal; to waive any informalities or technicalities; clarify any ambiguities in proposals; modify any criteria in this Request; and unless otherwise specified, to accept any item in a proposal.

1.8 **Contract:** The successful vendor may be required to enter into a written contract with WSU. The vendor agrees to accept the provisions of form DA-146a, Contractual Provisions Attachment, which is incorporated into all contracts with WSU and is attached to this Request. **If the contractor will not or cannot comply with any of the terms and conditions contained within this Request for Proposal, it will be their responsibility to make specific mention of conflicting terms in their proposal, otherwise the terms and conditions of this document will prevail.**

1.9 **Contract Documents:** This Request and any amendments and the response and any amendments of the successful vendor shall be incorporated along with the DA-146a into the written contract which shall compose the complete understanding of the parties.

1.10 In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:

- 1.10.1 Form DA-146a;
- 1.10.2 written modifications to the executed contract;
- 1.10.3 written contract signed by the parties;
- 1.10.4 this Request including any and all addenda; and
- 1.10.5 contractor’s written proposal submitted in response to this Request as finalized.

1.11 **Contract Formation:** No contract shall be considered to have been entered into by WSU until all statutorily required signatures and certifications have been rendered; funds for the contract have been encumbered with the Division of Accounts and Reports; and a written contract, if required, has been signed by the successful vendor.
1.12 **Open Records Act (K.S.A. 45-205 et seq.):** All proposals become the property of WSU. Kansas law requires all information contained in proposals to become open for public review once a contract is signed or all proposals are rejected.

1.13 **Federal, State and Local Taxes - Governmental Entity:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. The successful vendor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Request. **WSU is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the vendor's price quotations.**

1.14 **Debarment of Contractors.** Any vendor who defaults on delivery as defined in this Request may, be barred (a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the secretary of administration, after consultation with the contracting agency and the attorney general, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period exceeding three years. The secretary, after consultation with the contracting agency and the attorney general, shall have authority to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding three months unless an indictment has been issued for an offense which would be a cause for debarment under subsection (b), in which case the suspension shall, at the request of the attorney general, remain in effect until after the trial of the suspended person.

1.15 **Insurance:** WSU shall not be required to purchase any insurance against loss or damage to any personal property nor shall WSU establish a “self-insurance” fund to protect against any loss or damage. Subject to the provisions of the Kansas Tort Claims Act, the vendor shall bear the risk of any loss or damage to any personal property.

1.16 **Notice to Proceed:** No work may be started until all insurance, bonding and any other requirements have been satisfied by the contractor, and a Notice to Proceed has been issued by WSU. Once a Notice to Proceed has been issued, the successful contractor shall work continuously without interruptions until job is completed, unless instructed by Wichita State University to cease or interrupt work.

**SECTION II - PROPOSAL INSTRUCTIONS**

2.1 **Preparation of Proposal:** Prices are to be entered in spaces provided on the proposal cost form if provided herein. Computations and totals shall be indicated where required. The Committee has the right to rely on any price quotes provided by vendors. The vendor shall be responsible for any mathematical error in price quotes. The Committee reserves the right to reject proposals which contain errors.

**ALL COPIES OF PROPOSALS SHALL BE SUBMITTED IN A SEALED ENVELOPE OR CONTAINER. THE OUTSIDE SHALL BE IDENTIFIED CLEARLY WITH THE REQUEST NUMBER AND CLOSING DATE.**

A proposal shall not be considered for award if the price in the proposal was not arrived at independently and without collusion, consultation, communication or agreement as to any matter related to price with any other vendor, competitor or public officer/employee.

Technical proposals shall contain a concise description of vendor's capabilities to satisfy the requirements of this Request For Proposal with emphasis on completeness and clarity of content. Repetition of terms and conditions of the Request For Proposal without additional clarification shall not be considered responsive.

Vendors are instructed to prepare their Proposal following the same sequence as the Request For Proposal.

2.2 **Submission of Proposals:** Vendor's proposal shall consist of:
Five (5) hard copies of the Proposal, including literature and other supporting documents;
Vendor’s proposal, sealed securely in an envelope or other container, shall be received promptly at 2:00 p.m., Central Standard or Daylight Savings Time, whichever is in effect, on Tuesday, December 2, 2019, addressed as follows:

Wichita State University  
Office of Purchasing  
Proposal # B0001620, Closing:  Tuesday, December 3, 2019 @ 2:00 pm  
1845 Fairmount, Campus Box 12  
Wichita, KS 67260-0012

It is the bidder's responsibility to ensure bids are received by the closing date and time. Delays in mail delivery or any other means of transmittal, including couriers or agents of the issuing entity shall not excuse late bid submissions.

Faxed, emailed or telephoned proposals are not acceptable unless otherwise specified.

Proposals received prior to the closing date shall be kept secured and sealed until closing. WSU shall not be responsible for the premature opening of a proposal or for the rejection of a proposal that was not received prior to the closing date because it was not properly identified on the outside of the envelope or container. Late Technical and/or Cost proposals will be retained unopened in the file and not receive consideration.

2.3 Signature of Proposals: Each proposal shall give the complete mailing address of the vendor and be signed by an authorized representative by original signature with his or her name and legal title typed below the signature line. Each proposal shall include the vendor’s social security number or Federal Employer’s Identification Number.

2.4 Acknowledgment of Addenda: All vendors shall acknowledge receipt of any addenda to this Request. Failure to acknowledge receipt of any addenda may render the proposal to be non-responsive. Changes to this Request shall be issued only by the Office of Purchasing in writing.

2.5 Modification of Proposals: A vendor may modify a proposal by letter or by FAX transmission at any time prior to the closing date and time for receipt of proposals.

2.6 Withdrawal of Proposals: A proposal may be withdrawn on written request from the vendor to the Procurement Officer at the Office of Purchasing prior to the closing date.

2.7 Proposal Disclosures: At the time of closing, only the names of those who submitted proposals shall be made public information. No price information will be released. Interested vendors or their representatives may be present at the announcement at the following location:

Wichita State University  
Office of Purchasing  
1845 Fairmount, Campus Box 12  
Wichita, KS 67260-0012

Bid results will not be given to individuals over the telephone.

Copies of individual proposals may be obtained under the Kansas Open Records Act K.S.A. 45-215 et seq. and Wichita State University Policy and Procedures Manual, Section 20.01 by calling 316-978-6791 (Email to kora@wichita.edu) to request an estimate of the cost to reproduce the documents and remitting that amount with a written request. A vendor may make an appointment by calling the above number to view the proposal file. Upon receipt of the funds, the documents will be mailed. Information in proposal files shall not be released until a contract has been executed or all proposals have been rejected.

2.8 Notice of Award: An award is made on execution of the written contract by all parties. Only WSU is authorized to issue news releases relating to this Request, its evaluation, award and/or performance of the contract.
SECTION III - GENERAL PROVISIONS

3.1 **Term of Contract:** The term of this contract from date of award through November 30, 2020 with four additional automatic optional one (1) year renewal(s).

3.2 **Inspection:** WSU reserves the right to reject, on arrival at destination, any items which do not conform to the specifications of this Request.

3.3 **Termination for Cause:** The Director of Purchasing may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:

   3.3.1 the Contractor fails to make delivery of goods or services as specified in this contract; or

   3.3.2 the Contractor fails to perform any of the provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms.

   The Director of Purchasing shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within ten (10) days from the receipt of the notice (or such longer period as WSU may authorize in writing), the Director of Purchasing shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.

3.4 **Termination for Convenience:** The Director of Purchasing may terminate performance of work under this contract in whole or in part whenever, for any reason, the Director of Purchasing shall determine that the termination is in the best interest of WSU. In the event that the Director of Purchasing elects to terminate this contract pursuant to this provision, it shall provide the Contractor written notice at least thirty (30) days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may have not been terminated by the notice.

3.5 **Notices:** All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") which may be required or desired to be given by either party to the other shall be IN WRITING and addressed as follows:

Wichita State University  
Office of Purchasing, Director of Purchasing  
1845 Fairmount, Campus Box 12  
Wichita, KS 67260-0012  

or to any other persons or addresses as may be designated by notice from one party to the other.

3.6 **Rights and Remedies:** If this contract is terminated, WSU, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to WSU in the manner and to the extent directed, any completed materials. WSU shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

If it is determined, after notice of termination for cause, that Contractor's failure was due to causes beyond the control of or negligence of the Contractor, the termination shall be a termination for convenience.

In the event of termination, the Contractor shall receive payment pro-rated for that portion of the contract period services were provided to and/or goods were accepted WSU subject to any offset by WSU for actual damages including loss of federal matching funds.

The rights and remedies of WSU provided for in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

3.7 **Force Majeure:** The Contractor shall not be held liable if the failure to perform under this contract arises out of causes beyond the control of the Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes, etc.
3.8 **Waiver:** Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by WSU shall not constitute a waiver.

3.9 **Ownership:** All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by the Contractor under this contract shall be owned by the using agency. The Contractor may not release any materials without the written approval of the using agent.

3.10 **Independent Contractor:** Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

3.11 **Staff Qualifications:** The Contractor shall warrant that all persons assigned by it to the performance of this contract shall be employees of the Contractor (or specified Subcontractor) and shall be fully qualified to perform the work required. The Contractor shall include a similar provision in any contract with any Subcontractor selected to perform work under this contract.

Failure of the Contractor to provide qualified staffing at the level required by the proposal specifications may result in termination of this contract and/or damages.

3.12 **Conflict of Interest:** The Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are also in the employ of WSU and who are providing services involving this contract or services similar in nature to the scope of this contract to WSU. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any WSU employee who has participated in the making of this contract until at least two years after his/her termination of employment with WSU.

3.13 **Confidentiality:** The Contractor may have access to private or confidential data maintained by WSU to the extent necessary to carry out its responsibilities under this contract. Contractor must comply with all the requirements of the Kansas Open Records Act in providing services under this contract. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this contract shall be disseminated by either party except as authorized by statute, either during the period of the contract or thereafter. Contractor must agree to return any or all data furnished by WSU promptly at the request of WSU in whatever form it is maintained by contractor. On the termination of expiration of this contract, contractor will not use any of such data or any material derived from the data for any purpose and, where so instructed by WSU, will destroy or render it unreadable.

3.14 **Reviews and Hearings:** The Contractor agrees to advise the Director of Purchasing of all complaints of recipients made known to the Contractor and refer all appeals or fair hearing requests to the Director of Purchasing. WSU has the discretion to require the Contractor to participate in any review, appeal, fair hearing or litigation involving issues related to this contract.

3.15 **Nondiscrimination and Workplace Safety:** The Contractor agrees to abide by all federal, state and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws, rules and regulations may result in termination of this contract.

3.16 **Sexual Harassment and Retaliation Prohibited:** In accordance with Kansas Executive Order 18-04, Wichita State University has policies prohibiting sexual harassment, discrimination, and retaliation. These policies provide for confidentiality and anonymous reporting. To view these policies or to make a report of sexual harassment, discrimination, or retaliation, please visit [http://webs.wichita.edu/inaudit/tablepp.htm](http://webs.wichita.edu/inaudit/tablepp.htm)
3.17 **Environmental Protection:** The Contractor shall abide by all federal, state and local laws, rules and regulations regarding the protection of the environment. The Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws, rules or regulations may result in termination of this contract.

3.18 **Hold Harmless:** The Contractor shall indemnify WSU against any and all loss or damage to the extent arising out of the Contractor's negligence in the performance of services under this contract and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

WSU shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control, where such loss or destruction is to WSU property. The Contractor shall do nothing to prejudice WSU's right to recover against third parties for any loss, destruction or damage to WSU property.

3.19 **Care of WSU Property:** The Contractor shall be responsible for the proper care and custody of any WSU-owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this contract, and Contractor will reimburse WSU for such property's loss or damage caused by Contractor, normal wear and tear excepted.

3.20 **Prohibition of Gratuities:** Neither the Contractor nor any person, firm or corporation employed by the Contractor in the performance of this contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any WSU employee at any time.

3.21 **Retention of Records:** Unless WSU specifies in writing a shorter period of time, the Contractor agrees to preserve and make available all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of five (5) years from the date of the expiration or termination of this contract.

Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

The Contractor agrees that authorized federal and state representatives, including but not limited to, WSU personnel; independent auditors acting on behalf of WSU and/or federal agencies shall have access to and the right to examine records during the contract period and during the five (5) year post-contract period. Delivery of and access to the records shall be at no cost to WSU.

3.22 **Federal, State and Local Taxes Contractor:** WSU makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

3.23 **Antitrust:** If the Contractor elects not to proceed, the Contractor assigns to WSU all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and the State of Kansas relating to the particular products or services purchased or acquired by WSU pursuant to this contract.

3.24 **Anti-Kickback:** When WSU has reasonable grounds to believe that a violation of the Anti-Kickback Act of 1986 may have occurred, the university shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting department or agency of the United States or the Department of Justice.


The Contracting Officer may (1) offset the amount of kickback against any monies owed by the United States under the prime contract and/or (2) direct that the Prime Contractor withhold from sums owed a contractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (1) of this clause be paid over to the United State Government unless the Government has already offset those monies under subdivision (2) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.
WSU agrees to incorporate the substance of this clause, including this subparagraph in all subcontracts which exceed $100,000.

3.25 **Modification:** This contract shall be modified only by the written agreement of the parties with the approval of the PNC. No alteration or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.

3.26 **Assignment:** The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of WSU.

This contract may terminate in the event of its assignment, conveyance, encumbrance or other transfer by the Contractor without the prior written consent of WSU.

3.27 **Third Party Beneficiaries:** This contract shall not be construed as providing an enforceable right to any third party.

3.28 **Captions:** The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.

3.29 **Severability:** If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.

3.30 **Governing Law:** This contract shall be governed by the laws of the State of Kansas and shall be deemed executed at Wichita, Sedgwick County, Kansas.

3.31 **Jurisdiction:** The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas, District Court of Sedgwick County. The United States District Court for the State of Kansas sitting in Wichita, Sedgwick County, Kansas, shall be the venue for any federal action or proceeding arising hereunder in which WSU is a party.

3.32 **Mandatory Provisions:** The provisions found in Contractual Provisions Attachment (DA-146a) which is attached are incorporated by reference and made a part of this contract.

3.33 **Integration:** This contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This contract between the parties shall be independent of and have no effect on any other contracts of either party.

3.34 **Criminal Or Civil Offense Of An Individual Or Entity That Controls A Company Or Organization Or Will Perform Work Under This Contract:** Any conviction for a criminal or civil offense that indicates a lack of business integrity or business honesty must be disclosed. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in disqualification of the bid or termination of the contract.

3.35 **Competition:** The purpose of this Request is to seek competition. The vendor shall advise the Office of Purchasing if any specification, language or other requirement inadvertently restricts or limits bidding to a single source. Notification shall be in writing and must be received by the Office of Purchasing no later than five (5) business days prior to the bid closing date. The Director of Purchasing reserves the right to waive minor deviations in the specifications which do not hinder the intent of this Request.
3.36 **Injunctions:** Should Kansas be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of WSU, vendor shall not be entitled to make or assert claim for damage by reason of said delay.

3.37 **Acceptance:** No contract provision or use of items by WSU shall constitute acceptance or relieve the vendor of liability in respect to any expressed or implied warranties.

3.38 **Breach:** Waiver or any breach of any contract term or condition shall not be deemed a waiver of any prior or subsequent breach. No contract term or condition shall be held to be waived, modified, or deleted except by a written instrument signed by the parties thereto.

If any contract term or condition or application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition or application. To this end the contract terms and conditions are severable.

3.39 **Statutes:** Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the application of either party the contract shall be amended to make such insertion or correction.

3.40 **New Materials, Supplies or Equipment:** Unless otherwise specified, all materials, supplies or equipment offered by a vendor shall be new, unused in any regard and of most current design. All materials, supplies and equipment shall be first class in all respects. Seconds or flawed items will not be acceptable. All materials, supplies or equipment shall be suitable for their intended purpose and, unless otherwise specified, fully assembled and ready for use on delivery.

3.41 **Disclosure of Proposal Content and Proprietary Information:** All proposals become the property of the State of Kansas. The Open Records Act (K.S.A. 45-205 et seq.) of the State of Kansas requires public information be placed in the public domain at the conclusion of the selection process, and be available for examination by all interested parties. (http://da.ks.gov/purch/KSOpenRecAct.doc) No proposals shall be disclosed until after a contract award has been issued. The State reserves the right to destroy all proposals if the RFP is withdrawn, a contract award is withdrawn, or in accordance with Kansas law. Late Technical and/or Cost proposals will be retained unopened in the file and not receive consideration or returned to the bidder.

Trade secrets or proprietary information legally recognized as such and protected by law may be requested to be withheld if clearly labeled “Proprietary” on each individual page and provided as separate from the main proposal. Pricing information is not considered proprietary and the vendor’s entire proposal response package will not be considered proprietary.

All information requested to be handled as “Proprietary” shall be submitted separately from the main proposal and clearly labeled, in a separate envelope or clipped apart from all other documentation. The vendor shall provide detailed written documentation justifying why this material should be considered “Proprietary”. The Division of Purchases reserves the right to accept, amend or deny such requests for maintaining information as proprietary in accordance with Kansas law.

The State of Kansas does not guarantee protection of any information which is not submitted as required.

3.42 **Exceptions:** By submission of a response, the vendor acknowledges and accepts all terms and conditions of the RFP unless clearly avowed and wholly documented in a separate section of the Technical Proposal to be entitled: “Exceptions”.

3.43 **Protection of Public and Property:** The Firm shall be responsible for the safety of not only his own employees, but also the general public, University employees and others as well. Provide and maintain warning signs, lights, barricades, guard rails and other devices as required and appropriately located to give understandable warning of danger in the area of work.
SECTION IV - SPECIAL PROVISIONS

4.1 Proposal Format: The following information shall be part of the technical proposal: **Vendors are instructed to prepare their Technical Proposal following the same sequence as this section of the Request For Proposal.**

Transmittal letter which includes the following statements:

4.1.1 that the vendor is the prime contractor and identifying all subcontractors;
4.1.2 that the vendor is a corporation or other legal entity;
4.1.3 that no attempt has been made or will be made to induce any other person or firm to submit or not to submit a proposal;
4.1.4 that the vendor does not discriminate in employment practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin or disability;
4.1.5 that no cost or pricing information has been included in the transmittal letter or the Technical Proposal;
4.1.6 that the vendor presently has no interest, direct or indirect, which would conflict with the performance of services under this contract and shall not employ, in the performance of this contract, any person having a conflict;
4.1.7 that the person signing the proposal is authorized to make decisions as to pricing quoted and has not participated, and will not participate, in any action contrary to the above statements;
4.1.8 whether there is a reasonable probability that the vendor is or will be associated with any parent, affiliate or subsidiary organization, either formally or informally, in supplying any service or furnishing any supplies or equipment to the vendor which would relate to the performance of this contract. If the statement is in the affirmative, the vendor is required to submit with the proposal, written certification and authorization from the parent, affiliate or subsidiary organization granting WSU and/or the federal government the right to examine any directly pertinent books, documents, papers and records involving such transactions related to the contract. Further, if at any time after a proposal is submitted, such an association arises, the vendor will obtain a similar certification and authorization and failure to do so will constitute grounds for termination of the contract at the option of WSU;
4.1.9 vendor agrees that any lost or reduced federal matching money resulting from unacceptable performance in a contractor task or responsibility defined in the Request, contract or modification shall be accompanied by reductions in state payments to contractor; and
4.1.10 That the vendor has not been retained, nor has it retained a person to solicit or secure a state contract on an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the vendor for the purpose of securing business. For breach of this provision, the Committee shall have the right to reject the proposal, terminate the contract and/or deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee or other benefit.

4.2 Vendor's Qualifications: The vendor must include a discussion of the vendor's corporation and each subcontractor if any. The discussion shall include the following:

4.2.1 date established;
4.2.2 ownership (public, partnership, subsidiary, etc.);
4.2.3 number of personnel, full and part-time, assigned to this contract by function and job title;
4.2.4 relationship of the contract and other lines of business;

4.3 Subcontractors: The contractor shall be the sole source of contact for the contract. WSU will not subcontract any work under the contract to any other firm and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of the contract shall apply without qualification to any services performed or goods provided by any subcontractor.

4.4 Qualifications: A description of the vendor’s qualifications and experience providing the requested or similar service including resumes of personnel assigned to the project stating their education and work experience. The vendor must be an established firm recognized for its capacity to perform. The vendor must be capable of mobilizing sufficient personnel to meet the deadlines specified in the Request.

4.5 Payment Terms: Unless specified otherwise, Payment Terms are Net 30 days. Payment date and receipt of order date shall be based upon K.S.A. 75-6403(b). This Statute requires state agencies to pay the full amount due for goods or services on or before the 30th calendar day after the date the agency receives such goods or services
or the bill for the goods and services, whichever is later, unless other provisions for payment are agreed to in writing by the vendor and WSU. NOTE: If the 30th calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following workday will become the required payment date.

The statute further defines the date goods or services are received as the date such goods or services are completely delivered and finally accepted by WSU. The date the payment is made by WSU is defined as the date on which the warrant or check for such payment is dated, i.e. warrant issue date.

4.6 On-Site Inspection: Failure to adequately inspect the premises shall not relieve the successful vendor from furnishing without additional cost to WSU any materials, equipment, supplies or labor that may be required to carry out the intent of this Request. Submission of bids shall be construed as evidence that the vendor has made necessary examination, inspection and investigation. Failure to properly inspect the site may result in rejection of the vendor’s bid.

4.7 Submission of the Proposal: Submission of the proposal will be considered presumptive evidence that the vendor is conversant with local facilities and difficulties, the requirements of the documents and of pertinent State and/or local codes, state of labor and material markets, and has made due allowances in the proposal for all contingencies. Later claims for labor, work, materials, and equipment required for any difficulties encountered which could have foreseen will not be recognized and all such difficulties shall be properly taken care of by Contractor at no additional cost to WSU.

4.8 Bid Bond: The Director of Purchasing requires that a bid bond in the amount of $__5%____ be submitted by all bidders for bid dollar amounts of $40,000.00 or more to ensure faithful performance with the conditions of this Solicitation and/or ensuing contract. Bid Bond shall be written by a Bonding Company approved by the United States Treasury Department and licensed to do business in the State of Kansas. A properly executed bid bond shall be payable to Wichita State University. Bid Bonds must be submitted along with the bid to the Purchasing Office on the specified closing date and time.

4.9 Public Works Bond: The Successful Bidder shall file with the Director of Purchasing a Public Works Bond as required by K.S.A. 60-1111 in an amount equal to one hundred percent (100%) of price bid and shall be filed with the Clerk of the District Court in the County where the project is being constructed. If damages exceed the amount of the guaranty, WSU may seek additional damages. A Public Works Bond is not required for Projects with a contract price below $100,000.00.

4.10 Performance Bond: The Successful Contractor shall file with the Director of Purchasing a Performance Bond in an amount equal to one hundred percent (100%) of the price bid as security for the faithful performance of this contract and as security for the payment of all persons performing labor and furnishing materials in connection with this proposal. If damages exceed the amount of the guaranty, WSU may seek additional damages. A Performance Bond is not required for Projects with a contract price below $40,000.00.

Necessary bond forms will be furnished by the Office of Purchasing and can be completed by any General Insurance Agent. Bonds shall be issued by a Surety Company licensed to do business in the State of Kansas.

4.11 Subcontractors: Kansas Statute K.S.A. 75-3741 as amended requires a Bidder to list and identify the "Major Sub-Contractors" for Mechanical Construction, Plumbing Construction, and/or Electrical Construction included as a part of the Proposed, when a Single Contract for the "Project as a whole" is to be awarded.

4.12 NIAR Buildings: Contractor may need access to premises that are subject to federal regulatory requirements that control products and/or services for export, including, but not limited to, Export Administration Regulations (EAR”) and the [International Traffic in Arms Regulations (“ITAR”), all Contractor employees and subcontractors who have access to the premises must, as required by law, regulations, executive order and/or government contract, must meet the requirement of and show proof of being a “U.S. Person” (U.S. citizen, lawful permanent resident or protected individual as defined by 8 U.S.C.1324b (a)(3)) or eligible to obtain U.S. government authorization for this position. All individuals with access to the premises must agree to comply with all security requirements as set forth in this contract.

4.13 Insurance: The successful CONTRACTOR will be required to procure and maintain at CONTRACTOR’S expense, during the period of contract, the insurance described in the following subparagraphs. Insurance must
be with a company or companies qualified to do business in Kansas, acceptable to UNIVERSITY and written on
the standard approved comprehensive General Liability Policy form. The CONTRACTOR must furnish a certificate
showing that such insurance is in effect prior to the signing of contract award.

- All liability insurance policies will name WSU as additional insured with respect to claims, demands, suits,
  judgments, costs, charges, and expenses arising out of, or in connection with, any loss, damage, or injury
  resulting from the negligence or other fault of the CONTRACTOR, its agent, representatives, and employees.
The CONTRACTOR must furnish certificates of insurance to WSU in the following minimum limits prior to
execution of an agreement:

  - Comprehensive General Liability Insurance: With limits not less than $1 million for each occurrence involving
    bodily injury and property damage, a general aggregate of $2 million and products-completed operation
    aggregate of $1 million. Commercial General Liability will include the following coverage: premises
    operations broad form property damage, completed operations, independent contractors, and contractual and
    products liability.

  - Comprehensive Automobile Liability Insurance. This insurance, in an amount not less than $1 million for
    bodily injury and property damage combined will cover all owned, non-owned or hired vehicles of the
    contractor.

  - Worker’s compensation insurance for the Contractor, all partners and employees working on the project. The
    Contractor shall require all subcontractors to provide workmen’s compensation for themselves, their partners
    and employees to be engaged in such work unless the subcontractor’s employees are covered by the
    Contractor’s workers’ compensation coverage. The Contractor and all subcontractors shall include employer’s
    liability coverage with a one hundred thousand dollars ($100,000) limit for each accident; disease-policy limit;
    and disease-each employee limit.

  - Scope of insurance and special hazards: The insurance provided shall provide protection for the Contractor
    and his subcontractors against damage claims which may arise from operations under this Contract, whether
    such operations be by the insured or by anyone directly or indirectly employed by him, and also against any of
    the following special hazards which may be encountered in the performance of work under this Contract such
    as but not limited to: blasting, explosion, collapse, underground, rigging and hoisting, elevators and hoists.

  - Property Damage in an amount of not less than $1 million to cover all sums, which the Contractor will legally
    be liable to pay be reason of liability for damages to or destruction of the University’s property, including the
    loss of use thereof.

  - All risk installation floater: The principal contractor shall procure and maintain all risk installation floater
    insurance to include theft to protect the mutual interest of the owner and the contractor in an amount of one
    hundred percent (100%) for each contract project price. No other contractor is required to carry the all-risk
    installation floater insurance for this contract. The insurance is to apply from the contractor’s receipt of a
    contract/purchase order for each project until acceptance of the entire work by the owner.

  - The principal Contractor's property coverage shall name the Owner and all contractors and/or subcontractors
    performing work on the project as additional insureds.

  - The principal Contractor's general liability coverage (excluding professional liability) shall name the Owner
    and Project Architect/Engineer on the project as additional insureds.

  - Subcontractors’ insurance: The contractor shall either (1) require each of his subcontractors to procure and
    maintain during the life of his subcontract commercial general liability insurance, and automobile liability
    insurance of the type and in the same amount specified in the preceding paragraphs; or (2) insure the
    activities of his subcontractors in his own policies.

The CONTRACTOR shall indemnify the UNIVERSITY against any and all claims for injury to or death of any
person; for loss or damage to any property; and for infringement of any copyright or patent occurring in
connection with or in any way incidental to or arising out of the occupancy, use, service, operations or
performance of work under this contract.

UNIVERSITY shall not be precluded from receiving the benefits of any insurance the CONTRACTOR may carry
which provides for indemnification for any loss or damage to property in the CONTRACTOR’S custody and
control, where such loss or destruction is to UNIVERSITY property. The CONTRACTOR shall do nothing to
prejudice the UNIVERSITY’S right to recover against third parties for any loss, destruction or damage to
UNIVERSITY property.

The firm shall furnish the Owner with certificates showing the types, amounts, special coverages, effective dates
and dates of expiration of policies. Such certificates shall provide that the insurance company endeavor to
give 30 days’ notice of policy cancellation to the certificate holder.
4.14 **Materials and Workmanship:** The Contractor shall perform all work and furnish all supplies and materials, machinery, equipment, facilities, and means, necessary to complete all the work required by this solicitation, within the time specified, in accordance with the provisions as specified.

Any correspondence by potential bidders, with the using agency, must be documented in writing and submitted to the Office of Purchasing, to be considered for any possible addenda, and/or in the evaluation of the bid. Any change in specification shall be authorized only by the Office of Purchasing and will be issued by written addendum.

4.15 **Shipping and F.O.B. Point:** Unless otherwise specified, bid prices shall be F.O.B. DESTINATION, PREPAID AND ALLOWED (included in the price bid), which means delivered to WSU's receiving dock located at Gaddis Physical Plant Complex or other designated point as specified in this Request without additional charge. Shipments shall be made in order to arrive at the destination at a satisfactory time for unloading during regular working hours between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

4.16 **Equivalent Items:** Whenever a material, article or piece of equipment is identified in the specifications by reference to a manufacturer's or vendor's name, trade name, catalog number, etc., it is intended to establish a standard, unless otherwise specifically stated. Any material, article or equipment of other manufacturers or vendors shall perform to the standard of the item specified. Equivalent bids must be accompanied by sufficient descriptive literature and/or specifications to provide for detailed comparison. Samples of items, if required, shall be furnished at no expense to WSU and if not destroyed in the evaluation process, shall be returned at vendor's expense, if requested.

4.17 **Alternate Proposals:** Bids on items comparable to the above are invited. Bidders should submit complete specifications, descriptive materials and indicate any deviation from the specifications of this proposal.

4.18 **Equipment:** All offered equipment, equipment options, and hardware expansions must be identified by manufacturer and model number and descriptive literature of such equipment must be submitted with the project bids.

4.19 **Implied Requirements:** All products and services not specifically mentioned in this solicitation, but which are necessary to provide the functional capabilities described by the project(s) specifications, shall be included. Other products required to make the described software functional shall be identified in the vendor’s response.

4.20 **Industry Standards:** If not otherwise provided, materials or work called for in this contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.

4.21 **Default on Delivery:** Any vendor who defaults on delivery as defined in this Request may, be barred from bidding on any subsequent Request for a period to be determined.

4.22 **Indefinite Quantity Contract:** This Request is for an open-ended contract between vendor(s) and WSU to furnish an undetermined quantity of a good or service in a given period of time. An estimated quantity based on past history or other means may be used as a guide.

4.23 **Prices:** Prices shall remain firm for the entire contract period. Prices quoted shall be net delivered, including all trade, quantity and cash discounts. Any price reductions available during the contract period shall be offered to the WSU. Failure to provide available price reductions may result in termination of the contract.

4.24 **Price Adjustments:** On the yearly anniversary date of this contract, prices as bid may remain at the price bid or may be based on a price adjustment, either upward or downward, keyed to industry and changes. Contractor shall furnish figures at least thirty (30) days prior to expiration date to substantiate any claim for increase. Price increases shall not exceed five percent (5%) of the existing contract. If parties to the contract cannot agree on renewal terms, it is hereby understood that the contract will be re-bid.

4.25 **Documentation:** Examples of documentation delivered by the manufacturer with purchase of items shall be included for each individual project. Vendor must be able to deliver additional copies (beyond the response set) of documentation on an immediate basis for use in the evaluation process. Within the section, vendors may use any format. Include detailed, standard, published literature describing each equipment item and feature offered.
If asked, vendors shall deliver additional copies of response documentation immediately. Within the section, vendors may use any format. Include detailed, standard, published literature describing each item and feature offered.

4.26 **Warranty:** Standard Manufacturer’s Warranty, for all items in project bids, is to be considered a part of these conditions. All defective items shall be replaced free of charge.

Bidders must provide a ONE (1) year PARTS AND LABOR warranty on all materials and/or labor provided per each project bid in order to be a part of an award that results from this Request for Proposal. Additionally the contractor must provide extended warranties as specified in each project contract documents.

The successful bidder will be the sole point of contact on any problems with the equipment or systems during the warranty period.

The contractor shall be responsible for all work for each individual project awarded per the specifications. The contractor shall make good, repair and replace, at the contractor’s own expense, as may be necessary, any defective work, material acceptance, if in the opinion of agency and/or Office of Purchasing said defect is due to imperfection in material, design, or workmanship for the warranty period specified.

4.27 **References:** Provide Four (4) references. References shall have purchased similar items from the vendor in the last year. References shall show firm name, contact person, address, and phone number. Vendor employees and the buying agency shall not be shown as references.

4.28 **Certification of Specifications Compliance:** By submission of a bid and the signatures affixed thereto, the bidder certifies all products and services proposed in the individual project bids will meet or exceed all requirements of any specifications.

4.29 **Certification of Materials Submitted:** The response to this request, together with all project specifications set forth herein and all data submitted by the vendor to support the response including brochures, manuals, and descriptions covering the operating characteristics of the item(s) proposed, shall become a part of any contract between the successful vendor and WSU. Any written representation covering such matters as reliability of the item(s), the experience of other users, or warranties of performance shall be incorporated by reference into the contract.

4.30 **Experience:** All bidders must have a minimum of five (5) years continuous active participation in the applicable industry as a distinct company, providing equipment and systems comparable in size and complexity to the equipment and systems specified.

Bidders may be required to furnish information supporting the capability to comply with conditions for bidding and fulfill the contract if receiving an award of contract. Such information may include, but not be limited to, a list of similar size and type projects the Bidder has completed.

4.31 **Award:** Award will be by group.

**SECTION V**

**STATEMENT OF WORK**

**Introduction:** Wichita State University (WSU) is requesting proposals for job order contracting services. WSU reserves the right to accept or reject any or all proposals based on responsiveness, past performance of the firm, and other contributing factors. Based on the proposals submitted, WSU may select one or more firms for an annual contract with up to four optional one-year automatic renewals (up to five years total). WSU may request additional information from any or all firms submitting and at the University’s discretion may interview firms as necessary to make the selection.

WSU Purchasing, Facilities Planning, Facilities Services and Housing & Residential Life Departments will review all proposals. Firms are instructed to direct any and all inquiries regarding this RFP to:

Kim Sowell
WSU Purchasing
1845 Fairmount, Room 021
Wichita, Kansas 67260
WSU requests that firms designate a primary point of contact in their proposals.

**Process:** At any time, WSU may determine that a project would benefit from job order contracting services. The project will involve roof repairs/replacement or other modifications/improvements.

Once contracts are awarded for the job order contracting services/disciplines, only the contracted vendors will be allowed to provide quotes.

WSU reserves the right to contract with multiple firms in each group in order to obtain competitive pricing. It is understood that based on the hourly rates submitted in proposals, along with other information that one or more firms will be chosen to have the opportunity to provide proposals for job order contracting services on a per project basis.

On these occasions, WSU may notify one or more of the selected firm(s) that job order contracting services are needed. WSU will provide appropriate available project information, a desired scope and timeframe for the job order contracting services, and supplemental information as available and requested by the firm(s). Based on the information provided by WSU, the notified firm(s) shall provide a bid for the requested scope of work along with an itemized breakdown of costs and supporting quotes from subcontractors. WSU will have the option to waive the three quote minimum if circumstances justify it. WSU may require the use of approved vendors. WSU will have the right to accept or reject the bid(s). If WSU notifies multiple firms and receives multiple acceptable bids, WSU has the right to accept whichever bid WSU deems to be in the best interest of WSU based on price, past performance of the firms, current workloads of the firms, schedule and other contributing factors. If WSU accepts a bid, the firm’s contract will be amended to include the accepted bid amount. Upon notice to proceed from WSU the firm shall perform all work required to complete the requested scope of services within the pricing submitted and timeframe stipulated. If a firm consistently fails to be responsive or does not provide the level of service needed, WSU will have the right to discontinue their status as an approved firm.

WSU retains the right to solicit proposals from other job order contracting services firms or to use other project delivery methods in the best interest of WSU.

All proposals will include all labor, equipment, materials, transportation, supervision, permits (as applicable), and taxes (as applicable) to perform the work prescribed on a project by project basis. WSU reserves the right to evaluate performance of the selected firm(s) and shall have the option to renew or discontinue the job order contracting services contract with the selected firm(s) subject to the contract terms and conditions.

**Estimated Quantities:** WSU estimates a potential volume of job order projects in the range of $1 million to $1.5 million cumulative per year for all four groups of trades. Individual projects could range $100,000 to $900,000. However, WSU makes no guarantee or commitment of any kind regarding the usage of job order contracting resulting from this solicitation.

**Staffing Availability:** Must be available for scheduling five (5) days per week from the hours of 8 a.m. to 5 p.m., depending upon the project, not including National Holidays. Duration of each assignment is dependent upon the scope of the project.

**Completion Times:** No extension of time shall be granted unless the Contractor shall demonstrate in writing that the delay in completion of the work was caused by a delay in a portion of the work that was on the critical path of the project.

The completion time contemplated by this agreement anticipates a certain number of lost days due to normal inclement weather conditions, acts of nature, unusual delay in deliveries, unavoidable casualties, or other causes beyond the Contractors control; or by delayed authorization by the owner; or by other causes that the Architect may determine or justify as a delay, then the Contract time can and shall be extended by Change Order for such reasonable time as the Architect/Owner deems reasonable.
Pricing Form for Group 3: Roofing

SCHEDULE OF UNITS:

Firm shall complete the “Detailed Breakdown of Labor Rates” sheet for total hourly rates.

In addition to the labor rates, firm shall submit a schedule of rates which include the following costs, and any other applicable costs, required to perform work necessary for each project.

- Equipment Rates
- Markup Costs for Rental Equipment
- Markup Costs for Materials
- Markup Costs for Subcontractors
- Overhead and Profit Multipliers

It is understood that from these hourly rates and other information one or more firms will be chosen to have the opportunity to provide proposals for job order contracting services on a project basis.

_______________________________                                           _______
Signature                                                                                        Date

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Regular hours begin at 7:00 a.m. and conclude at the end of contractors normal work hours on a Monday through Friday work week. Not to include holidays as follows, New Year’s Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day.

**Premium hours are any hours not included in the definition of regular hours.
Other Charges:

Equipment: Billed at ________________ per hour

Equipment rental Billed at cost + ____________%

Material: Billed at cost + ____________%

Subcontractor: Billed at cost + ____________%

Overhead & Profit: Billed at cost + ____________%

WSU reserves the right to audit a project including project change orders with itemized cost, including labor, materials and can request all subcontractor invoices, sales and/or service agreements as well as equipment rental receipts from contractors.

Prices may be adjusted annually with written notification 30 days before contract is scheduled for renewal and subject to approval by WSU. Refer to Section IV - Special Provisions, # 4.24 – Price Adjustments.
CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of __________________ 20____.

1. Terms Herein Controlling Provisions: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. Kansas Law and Venue: This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.

3. Termination Due To Lack Of Funding Appropriation: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. Disclaimer Of Liability: No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, et seq.).

5. Anti-Discrimination Clause: The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, et seq.) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to
comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

6. **Acceptance of Contract**: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. **Arbitration, Damages, Warranties**: Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

8. **Representative's Authority to Contract**: By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility for Taxes**: The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. **Insurance**: The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq*.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.

11. **Information**: No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101, *et seq*.

12. **The Eleventh Amendment**: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

13. **Campaign Contributions / Lobbying**: Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.